not necessary nor timely for us to comment on the Ricaud case here, but we believe that a reading of it will suffice to show that the court in framing the language of its decision did not at all contemplate such a state of facts as appears in the principal case. So also with the other two authorities cited in Estate of Colton.[5] In each the point upon which the decision is based is foreign to that here involved.

There can be no doubt that the law favors dispatch in the settling up of estates,[6] and to the effecting of this end the courts quite generally have ruled that the distributees need not await complete liquidation of the estate, but may come in and demand distribution when the debts and expenses of administration are fully paid. "The law does not allow the representative of the estate to retain the money or other assets in his hands, against the will of the legatees or distributees, to await the maturing of debts not due, or the establishment of contingent liabilities." [7]

It may be urged that a distribution of such a chose in action as that involved in litigation in the Colton case 'will result in embarrassment to the administrator, or to the administration.' But the worst that could happen would be an increase in the number of active parties in interest, and all inconvenience which might arise from this source is adequately provided against in the Code of Civil Procedure of California.[8]

J. U. C., Jr.

Evidence: Presumption of Survivorship Under the Common and the Civil Law: Suspension of Power of Alienation.—In the Estate of Cross [1] the will of the testators, husband and wife, provided, "In the event of the death of either one of the testators herein, if the survivor shall continue living for the period of thirty days thereafter, then and in that event the following terms of this instrument shall prevail, that is to say:

1. The whole estate of the deceased testator and of the community shall pass to the surviving husband or wife." The will then disposed of the property in the event of the death of the surviving spouse within thirty days.

Kemp's Estate, 49 Misc. Rep. 396; 100 N. Y. S. 221 (1906); Dawes v. Boylston, 9 Mass. 352; 6 Am. Dec. 72 (1812); 11 Am. & Eng. Enc. (2d ed) 828, 829, 832; 18 Cyc. 175.

[5] In re Kittson, 45 Minn. 197; 48 N. W. 419 (1891); Murff v. Frazier, 41 Miss. 408.

[6] C. C. P. Cal., Secs. 1651, 1652, 1661, 1665; Estate of Crosby, 55 Cal. 574, 581 (1880); In re Moore, 72 Cal. 334, 342; 13 Pac. 871 (1887); Maddock v. Russell, 109 Cal. 417, 423; 42 Pac. 139 (1895); Dennis v. Bint, 122 Cal. 39, 45; 54 Pac. 378 (1898).

[7] Allison v. Abrams, 40 Miss. 747, 750; In re Snedeker, 114 N. Y. S. 936 (1908); Ward v. Tinkham, 65 Mich. 695; 32 N. W. 901 (1887); Le Blanc v. Bertant, 16 La. Ann. 294, 298; Succession of Hasley, 27 La. Ann. 586.

[8] C. C. P., Secs. 381, 382, 385.

[1] 44 Cal. Dec. 433 (Sept. 24, 1912).

The purpose of the above clauses is, of course, to provide for the contingency of the death of the husband and wife in a common disaster with no evidence as to survivorship. In such a case, the common law makes no presumption; the result is that the party fails who has the burden of proving survivorship. In California, the presumptions of the civil law apply.[2] Common law judges have been inclined to boast of the superiority of the common law in this respect; the superiority, however, is not evident. The theoretical objection to the common law rule is that the incidence of the burden of proof is a technical and uncertain matter for which there is no fixed rule, depending as it does on the kind of action, the pleadings, presumptions, knowledge of the parties and other varying conditions. The practical objection is illustrated by Wing v. Angrave[3] where the beneficiary of both husband and wife failed to obtain the property of either, for the reason that in the husband's estate his beneficiary could not prove the prior death of the wife; in the wife's estate, hers could not prove the prior death of the husband.[4] The civil law presumptions would have produced a better result; but these presumptions being arbitrary, and varying from time to time with the age of the persons, cannot be considered a satisfactory substitute for a provision in the will like the one above quoted. The only objection made to this provision was that it suspended the vesting of the estate for a period not measured by lives in being; to this the court pertinently replied that it is "humanly impossible" for a testator to do any such thing. This must of course be so; the only effect of a devise violating the rule against restraint of alienation is to render that devise invalid and cause the estate to vest elsewhere.[5] In the principal case the estate vested in the heirs of the decedent subject to divestiture if the spouse survived thirty days. There were always persons in being capable of conveying the entire estate.

It is an interesting fact to notice that the will in question was a mutual will,—the main utility of which seems to be to raise knotty problems for litigation. A. M. K.

Evidence: Proof of Specific Acts of Negligence to Prove Characteristic Carelessness of Employee.—In Worley v. Spreckels Bros. Commercial Co.[1] a servant sued the master for injuries caused by the carelessness of a fellow servant, who was charged with being a careless person to the master's knowledge. Evidence was admitted of another act of negligence committed by the fellow servant. Held, no error. By the

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[2] C. C. P. Cal., Sec. 1963, subd. 40.
[3] 8 H. L. C. 183 (1860).
[4] Newell v. Nichols, 75 N. Y. 78; 31 Am. Rep. 424 (1878).
[5] C. C., Cal., Secs. 715, 716.

[1] 124 Pac. 697 (June 11, 1912).